

Application No.: 10/036,286
Amendment and Response to October 19, 2006 Non-Final Office Action

REMARKS

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Claims 1 – 22 and 30 - 35 are in the application. Claims 1 – 3, 6, 30, 31, and 33 – 35 are currently amended; claims 23 – 29 are canceled; and claims 4, 5, and 7 – 22 remain unchanged from the original versions thereof. Claims 1, 30, 31, and 33 – 35 are the independent claims herein.

No new matter has been added to the application as a result of the amendments submitted herewith. Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 USC § 112

Claims 1 - 35 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner stated the term "segment" was indefinite. This rejection is respectfully traversed.

Claims 1, 30, 31, and 33 – 35 have been amended to replace the previous recitation of - - segments - - with "segments of recipients" to clarify that the claimed segments are segments of recipients from the claimed plurality of recipients. Support for this amendment may be found in the Specification at least at paragraph [0034], lines 1 – 4.

Applicant respectfully submits that at no point in the Specification is the term "marketing segments" used or referenced or claimed. Thus, while Applicant understands the Examiner's efforts to interpret the prior version of the claims, Applicant wishes to make it clear that the disclosed and claimed "segments of recipients" is not the same as or suggested by term "marketing segments" used by the Examiner and the Kotler reference.

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Applicant respectfully submits that the term "segments of recipients" is not indefinite under 35 USC 112, 2nd paragraph. Reconsideration and withdrawal of the rejection under 35 USC 112, 2nd paragraph is therefore respectfully requested.

Claim Rejections – 35 USC § 103

Claims 1 - 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lancaster U.S. Patent Publication No. 2002/0194094 A1 in view of Kotler (Marketing Management). This rejection is respectfully traversed.

Regarding claims 1, 23, 30, and 31, the Office Action explicitly cited and relied upon Lancaster for disclosing all aspects of the prior version of the subject claims except for the aspect of "determining marketing segments". Regarding "determining marketing segments", the Office Action stated that this aspect was inherently disclosed by Lancaster but explicitly disclosed in Kotler. Therefore, the Office Action cited and relied upon Kotler, specifically at pages 278 and the BOA example disclosed on pages 293 – 294, for disclosing determining marketing segments.

However, as introduced hereinabove regarding the 35 USC 112, 2nd paragraph rejection, Applicant claims a "segment of recipients" (i.e., portion of the recited plurality of potential recipients), whereas Kotler discloses and discusses segmenting a broad marketplace (e.g., computers or soft-drinks). That is, Applicant's claimed "segment of recipients" refers to a portion (i.e., segment) of the claimed plurality of potential recipients but Kotler's "marketing segments" explicitly refer to dividing a broad economic marketplace into smaller segments. (See Kotler, page 279) It is clear that Kotler's segment marketing and market segmentation are not the same as the claimed "segments of recipients".

Thus, it is clear that the explicit segment marketing and market segmentation of Kotler is not the same as or suggestive of Applicant's claimed "segments of recipients". Furthermore, even if Lancaster were to inherently disclose or suggest the relied upon

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marketing segment (not admitted by Applicant), such disclosure would still fail to support the rejection since Applicant does not claim marketing segments or market segmentation.

Further, Applicant respectfully submits that the cited and relied upon combination of Lancaster and Kotler also fails to disclose or suggest the claimed "determining a plurality of segments of recipients from a plurality of potential recipients of a communication regarding a financial product, each of said plurality of segments including at least one member of said plurality of potential recipients and having a predetermined associated response rate, wherein a segment's associated response rate is indicative of a member of said segment exhibiting a designated behavior after receiving said communication". Support for the preceding emphasized portion of the claims may be found in the Specification at least at paragraph [0039] where it is clearly disclosed that the response rate is determined prior to being used to determine what recipients receive future communications (i.e., predetermined).

In contrast to Applicant's Specification and claims, Lancaster is silent regarding a response rate and instead seeks to match customer's needs with offerings of a combination of financial products. Lancaster does not consider any response rates predetermined for customers in the decisioning of whom to offer/pitch the combination of products. Lancaster appears to provide that which has long been practiced – trying to guess what a customer wants or needs and/or "up-selling" products.

Therefore, it is clear that the combination of Lancaster and Kotler fails to disclose that which is claimed by Applicant. Significantly, Applicant does not claim that which is argued and allegedly disclosed by Lancaster and Kotler. Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1, 30, and 31 under 35 USC 103(a).

Claims 2 – 22 depend from claim 1 and claim 32 depends from claim 31. Applicant respectfully submits that claims 2 – 22 and 32 are patentable over Lancaster and Kotler under 35 USC 103(a) for at least depending from a patentable base claim.

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Applicant respectfully submits that claims 33 – 35 are patentable for at least the same reasons as claims 1, 30, and 31.

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CONCLUSION

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

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Date



Randolph P. Calhoun
Registration No. 45,371
Buckley, Maschoff & Talwalkar LLC
50 Locust Avenue
New Canaan, CT 06840
(203) 972-5985